



Department
for Environment
Food & Rural Affairs

www.gov.uk/defra

Consultation on the draft Control of Waste (Dealing with Seized Property) (England and Wales) Regulations 2015

December 2014



Llywodraeth Cymru
Welsh Government

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This publication is also available on the consultation tab on the Government website at: www.gov.uk/defra

Any enquiries regarding this document/publication should be sent to us at: fly-tipping@defra.gsi.gov.uk in England, and waste@wales.gsi.gov.uk in Wales

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1. Introduction

1.1 This consultation paper invites views on proposals for new Regulations on the seizure of vehicles in relation to offences concerning waste. The aim of the draft Control of Waste (Dealing with Seized Property) (England and Wales) Regulations 2015 (the draft Regulations) at **Annex A** is to help the Governments in England and Wales reduce illegal waste activity, including fly-tipping, by giving enforcement authorities (local authorities, the Environment Agency and Natural Resources Wales) more effective tools to use in the investigation and prosecution of suspected offences.

1.2 The Government is seeking views on the proposed approach to seizure of vehicles and invites comments on its assessment of the likely costs and benefits. Further details on what is being proposed are included in the draft Regulations at **Annex A**.

2. Purpose of the consultation

2.1 In April 2011 the Government launched the Red Tape Challenge, an initiative to review and remove unnecessary regulation which potentially restricts business growth. The Red Tape Challenge stated that the existing powers for enforcement authorities to seize vehicles suspected of involvement in fly-tipping and waste crime should be strengthened to reduce the burden of this criminal activity on businesses, other organisations and individuals.

2.2 In response to the Red Tape Challenge, the Government is seeking views on proposals to commence powers to help enforcement authorities to disrupt and prevent illegal waste activities more effectively than at present, reducing the impact of waste crime on the environment, while helping to bring about a level playing field for the legitimate waste industry and encouraging growth through investment.

3. Geographical extent

This consultation and descriptions of law relate to England and Wales only.

4. Audience

This consultation is primarily (but not exclusively) aimed at: local authorities, waste producers, waste managers, waste brokers and dealers, waste carriers, professional and membership organisations, central government, agencies/public bodies, the business/private sector, consultants and charitable/voluntary bodies.

5. Responding to this consultation

If you are responding to the consultation in relation to England, please send responses:

By email to: fly-tipping@defra.gsi.gov.uk

Or in writing to:

Waste Regulation and Crime
Defra
Area 2B, Nobel House
17 Smith Square
London
SW1P 3JR

If you are responding to the consultation in relation to Wales, please send responses:

By email to: waste@wales.gsi.gov.uk

Or in writing to:

Waste & Resource Efficiency Division
Department for Natural Resources
Welsh Government
Cathays Park
Cardiff
CF10 3NQ

The deadline for responses is 3 February 2015.

6. Duration

The proposals concerning the draft Regulations result from recommendations made under the Red Tape Challenge process. This consultation will run for 7 weeks. This is in line with the Cabinet Office's 'Consultation Principles' which advises Government departments to adopt proportionate consultation procedures.

The consultation **opens** on 15 December 2014.

The consultation **closes** on 3 February 2015.

7. After the consultation

7.1 A summary of the responses to this consultation will be published and placed on the Government websites at www.gov.uk/defra and www.wales.gov.uk.

7.2 This summary will include a list of names and organisations that responded but not personal names, addresses or other contact details.

7.3 If you do not want your response - including your name, contact details and any other personal information - to be publicly available, please say so clearly in writing when you send your response to the consultation. Please note, if your computer automatically includes a confidentiality disclaimer, that won't count as a confidentiality request.

7.4 Please explain why you need to keep details confidential. We will take your reasons into account if someone asks for this information under freedom of information legislation. But, because of the law, **we cannot promise that we will always be able to keep those details confidential.**

8. Compliance with the Consultation Principles

8.1 This consultation is being conducted in line with the "Consultation Principles" as set out in the Better Regulation Executive guidance which can be found at <https://www.gov.uk/government/publications/consultation-principles-guidance>

8.2 If you have any comments or complaints about the consultation process, please address them to:

Consultation Co-ordinator
Room 629
9 Millbank
17 Smith square
London
SW1P 3JR

Or e-mail: consultation.coordinator@defra.gsi.gov.uk

9. Background

9.1 Waste crime blights the areas where it occurs, can pose a risk to the environment and human health, and affects the livelihoods of those involved in the legitimate waste management industry.

9.2 Waste crime takes many forms. There are the obvious illegal fly-tips that blight our streets and countryside. But often fly-tipping is a result of other crimes involving, for example, breaches of waste controls that are meant to ensure waste is dealt with responsibly and waste being described or treated incorrectly. Many people and businesses are also duped into paying illegal operators who they believe will deal with their waste responsibly but who then dump the waste illegally. More widely, waste crime has been estimated by the Environmental Services Association Education Trust to cost the UK economy £568m pa.

9.3 The Environment Agency and Natural Resources Wales deal with the more serious side of waste crime. They are aware of 662 operational illegal waste management waste sites. It is possible that these sites will continue to operate elsewhere even if those sites are shut down.

9.4 The impacts of waste crime and illegal dumping include:

- a reduction in the quality of local environments;
- cost and aggravation for landowners, and the enforcement authorities who are left to deal with waste that is dumped illegally;
- pollution of the environment and, sometimes, risks to human health; and
- the legitimate majority of the waste management industry being undermined.

9.5 Data from Flycapture, the national fly-tipping database, records that in 2013/14, local authorities reported 852,000 incidents of fly-tipping in England, costing taxpayers an estimated £45.2 million to clear. Once the clearance costs to private landowners and the enforcement costs associated with investigating and prosecuting offenders are included, the real costs could be significantly higher.

What are the current powers for seizure of vehicles?

9.6 Section 6 of the Control of Pollution (Amendment) Act 1989 (the 1989 Act) currently allows an authorised officer to seize a vehicle and its contents where they have reasonable grounds for believing that an offence under section 33 of the Environmental Protection Act 1990 (the 1990 Act) (the unauthorised or harmful depositing, treatment or disposal etc. of waste) has been committed and that the vehicle was used in the commission of the offence. The enforcement authority must obtain a warrant from a magistrate prior to seizing the vehicle.

9.7 Enforcement authorities can only seize vehicles where they have failed to ascertain the name and address of any person who can provide them with details of who was using the vehicle at the time when the offence was committed. If the registered keeper does not claim the vehicle within 28 days, the vehicle can be sold or destroyed.

Previous consultation

9.8 In June 2008 Defra consulted¹ on the proposed approach to seizure of vehicles and invited comments on its assessment of the likely costs and benefits. Stakeholder views differed on some of the detail, most importantly on the optimum length of time an authority should be allowed to retain a seized vehicle, but there was broad support from enforcement authorities and the waste management industry.

9.9 In July 2009 Defra wrote to all respondents to the 2008 consultation specifically asking for their views on what the optimum retention period would be. Again there were different views but, as a result of stakeholder comments, Defra determined that 15 working days was a suitable period for a local authority to retain a vehicle, balancing the needs of the local authority to properly investigate an offence with the rights of vehicle owners to reclaim their property. In view of the fact that the Environment Agency and Natural Resources Wales deal with more serious and complex incidents of waste crime, it was decided that they should be able to retain a vehicle for up to 30 working days for certain offences (those specified in section 33C(1) of the 1990 Act), once a valid claim for the property has been made.

9.10 These updated retention periods are reflected in the draft Regulations. We believe our proposal strikes the right balance between those authorities who argued for a longer period and others who, rightly, pointed to the human rights / restraint of business implications if the retention periods were excessive.

How will the powers change?

9.11 We propose to commence sections 37 and 46 of the Clean Neighbourhoods and Environment Act 2005 (the 2005 Act), which will enable enforcement authorities to seize vehicles for a wider range of suspected offences, if they have reasonable grounds to believe or suspect that an offence has been committed. The offences are:

- section 1(1) of the 1989 Act (offence of transporting controlled waste without registering);

¹ <http://webarchive.nationalarchives.gov.uk/20081023131051/http://defra.gov.uk/corporate/consult/waste-controls/>

- section 33 of the 1990 Act (prohibition on unauthorised or harmful depositing, treatment or disposal etc. of waste);
- section 34 of the 1990 Act (duty of care etc. as respects waste);
- regulation 38(1)(a) and (b) of the Environmental Permitting (England and Wales) Regulations 2010 (SI 2010/675) (the EPRs) (requirement for environmental permit).

Enforcement against unregistered waste carriers

9.12 Section 37 of the 2005 Act amends section 5 of the 1989 Act to provide for amended powers for seizure.

9.13 These amendments will allow enforcement authorities to search and seize vehicles suspected of being used in commission of an offence under section 1(1) of the 1989 Act. A police officer in uniform will be the only person empowered to stop a vehicle on a road.

Enforcement of illegal waste disposal and the duty of care

9.14 Section 46 of the 2005 Act amended the 1990 Act to add new sections 34B and 34C.

9.15 These amendments will allow enforcement authorities to search and seize vehicles suspected of being used in commission of offences under sections 33 and 34 of the 1990 Act. A police officer in uniform will be the only person empowered to stop a vehicle on a road.

Enforcement of environmental permitting offences

9.16 Under regulation 38 of the EPRs, it is an offence to operate a regulated facility or cause or knowingly permit a water discharge activity or groundwater activity without or other than in accordance with an environmental permit, or knowingly cause or permit such conduct. The Waste (Household Waste Duty of Care) (England and Wales) Regulations 2005 (SI 2005/2900) amended section 46 of the 2005 Act to add these offences to those in section 34B of the 1990 Act.

Why are these powers being commenced?

9.17 The new powers will allow enforcement authorities to carry out more effective enforcement of waste controls and continue to contribute to a reduction in illegal waste activity.

9.18 The powers will reduce unnecessary bureaucracy for frontline enforcement authority staff.

9.19 There will be benefits for enforcement authorities but also for the waste management industry as more effective action to tackle illegal waste activity will help create a level-playing field for legitimate businesses, especially waste carriers.

9.20 Benefits will also be passed on to the public sector as a result of a reduction of illegal waste dumping. Magistrates will no longer have to issue a warrant for seizure.

10. Estimated costs and benefits of these proposals

10.1 This section sets out our estimates of the costs and benefits that might arise as a result of the draft Regulations.

Who will be affected by this?

10.2 The key groups that will be affected by the draft Regulations are local authorities, the Environment Agency and Natural Resources Wales who will be responsible for enforcing the draft Regulations.

10.3 The draft Regulations are aimed at tackling illegal waste operations. Legitimate businesses that deal with waste may benefit as the powers will help create a level playing field, if those who undercut the market by disposing of waste illegally are increasingly subject to enforcement action. The draft Regulations will assist enforcement authorities in their investigations to identify those responsible for vehicles suspected of being associated with the commission of an offence and reducing their use in the commission of further illegal waste activity.

10.4 The primary focus of these powers is not householders or the carrying by householders of their own waste to legitimate disposal sites. However, these powers could be used to search and seize the vehicle of a householder if it is suspected of being used in fly-tipping.

Costs and benefits for business

10.5 Businesses that carry out their waste activities legitimately are not expected to experience costs as a result of these proposals.

10.6 Businesses that carry out their waste activities illegally (e.g. fly-tipping waste, carrying waste without being registered) will experience costs as a result of these proposals, either

through being required to find legitimate disposal routes or as a direct result of having their vehicle seized and having to hire a replacement vehicle. It is not appropriate to include costs for business that carry out their waste activities illegally in our assessment.

10.7 The draft Regulations should act to level the playing field for businesses dealing with waste. By removing the tools of illegitimate businesses, those businesses will lose their market share, leaving responsible contractors to compete on price and quality of service. This will make responsible waste management a more attractive proposition, along with the environmental benefits the proposals will bring.

10.8 Bringing more businesses into the regulated community and financially penalising those that do not comply will go some way to levelling the playing field. This is consistent with calls from the waste industry.

Costs and benefits to enforcement authorities

10.9 If, as expected, the reduced burden of seizing a vehicle leads enforcement authorities to seize more vehicles, they may incur an additional cost. Enforcement authorities will only do this where necessary to aid investigation of suspected offences and if they believe it represents good value for money (for instance, by reducing the clean-up costs associated with fly-tipping, which is discussed below), so we have not included an assessment of the scale of this additional cost.

10.10 The overall purpose of these additional powers is to simplify the regulatory regime, thereby reducing the number of fly-tipping incidents, breaches of the duty of care, illegal waste sites and unregistered waste carriers. This will reduce costs for enforcement authorities to tackle non-compliant operators, simplify the enforcement process and will be welcomed by the legitimate industry which makes up the vast majority of operators.

10.11 After discussions with a number of local authorities, it is assumed that there will be a reduction in the number of fly-tipping incidents of 2% - 5%, which will mean a reduction in clean-up and enforcement costs to enforcement authorities. In the financial year 2013/14 local authorities in England spent £45.2 million on removing fly-tipped waste. These figures do not take account of fly-tipping on private land which has been estimated to cost £50 - 150 million to clear up each year. If as a direct result of these measures fly-tipping was to reduce by as little as 2% per year, this would result in a saving to local authorities in England of around £4.2 million present value over 5 years. If there were a similar reduction of fly-tipping incidents on private land, we expect there would also be a comparable saving in that regard.

10.12 The most notable benefit for enforcement authorities would be the reduction in clearance costs of fly-tipping, although this would have to be balanced against any additional enforcement costs.

10.13 The draft Regulations will enhance the current regime by simplifying the process in a bid to reduce costs and make it a more feasible enforcement option for enforcement authorities. The draft Regulations will also remove a small burden on HM Courts and Tribunals Service by abolishing the need for a warrant for seizure, resulting in cost savings as regards magistrate and clerk time. It is estimated that this proposal would give a cost saving for local authorities, the Environment Agency and Natural Resources Wales of £496.70 for each vehicle seizure and a time saving of 4 hours (a reduction of 31% in costs and 31% in time from current administrative levels).

10.14 A comparison of the current and proposed regimes is set out in the table below. Enforcement will not always require the completion of all the processes detailed below when conducting a seizure but the table is a good representation of the average saving in costs and time per seized vehicle as a result of the new processes.

TABLE 1: Process of vehicle seizure and storage with associated time and cost²

(Changes between current and new processes are highlighted in the shaded cells)

| Vehicle Seizure Process | Current Time | Current Costs | New Time | New Cost |
|---|---------------|---------------|----------------------------|----------------|
| Decision on whether vehicle should be seized | 2 hrs | £71.32 | 2 hrs | £71.32 |
| Taking of witness / suspect statements | 2 hrs | £71.32 | 2 hrs | £71.32 |
| Driver vehicle licensing agency (DVLA) check | 0.5 hrs | £17.83 | 0.5 hrs | £17.83 |
| Preparations for requesting a warrant | 2 hrs | £71.32 | Not required | Not required |
| Court appearance to obtain warrant | 3 hrs | £106.98 | Not required | Not required |
| Searching for vehicle on police national computer | 0.5 hrs | £17.83 | 0.5 hrs | £17.83 |
| Police attendance at scene of seizure | 2 hrs | £71.32 | 2 hrs | £71.32 |
| Seized vehicle pick up and transport to storage | | £230.62 | | £230.62 |
| Possible disposal of waste if vehicle is loaded | | £118.33 | | £118.33 |
| Vehicles storage | Up to 28 days | £153.80 | Up to 38 days ³ | £208.73 |
| Vehicle storage for driver identification / investigation | 3 days | £16.50 | 3 days | £16.50 |
| Publication of notice in local paper | | £373.33 | Not required | Not required |
| Notification of seizure/destruction | 1 hr | £35.66 | 1 hr | £35.66 |
| Vehicle transport to final destination | | £246.66 | | £246.66 |
| Total | 13 hrs | £1,602.82 | 9 hrs | £1,106.12 |
| Cost and time saving | | | 4 HRS | £496.70 |

² These are based on consultation with the enforcement authorities. The assumption is that the time and costs will be the same for a local authority, the Environment Agency and Natural Resources Wales (£35.66 / hour). These costs will differ according to the size of vehicle seized i.e. a tipper lorry will cost more to seize than a car. However, for the purposes of this table, estimates are for a vehicle the size of a transit van, a good representative proxy for the average costs incurred by a local authority.

³ Includes retention period - 15 working days; determination period – 3 working days; and collection period 10 working days.

11. Detail

What the Government is proposing

11.1 The 2005 Act provides for the Secretary of State and the Welsh Ministers to make regulations setting out detailed requirements in relation to:

- the duties of enforcement authorities in relation to the safe custody of seized property;
- the circumstances in which they must return any such property to a person claiming entitlement to it;
- the manner in which such persons, and the seized property to which they are entitled, may be determined;
- the circumstances in which an enforcement authority may sell, destroy or otherwise dispose of seized property, which:
 - (a) must require the enforcement authority to publish a notice in such form, and to take any other steps, as may be specified, for informing persons who may be entitled to the seized property that has been seized and is available to be claimed;
 - (b) must prohibit the enforcement authority from selling, destroying or otherwise disposing of any seized property unless a specified period has expired without any specified obligation arising for the authority to return the property to any person;
 - (c) may allow for the requirements in (a) and (b) to be dispensed with if the condition of the seized property requires its disposal without delay.
- the uses to which the proceeds of any such sale may be used.

11.2 The draft Regulations have been prepared to reflect previous consultation responses and ensure the policy objectives of the 2005 Act can be delivered.

Question 1) Do you have any general comments on the draft Statutory Instruments at Annex A and B?

Question 2) Is the procedure for dealing with seized property clear?

Guidance for enforcement authorities

11.3 We are considering preparing guidance for enforcement authorities on the exercise of these powers to ensure that they are used proportionately to aid investigation when there is evidence of a breach of the law.

Question 3) What benefits might be derived from guidance and what aspects of the draft Regulations would you like addressed in guidance?

Proposed costs and benefits of the draft Regulations

11.4 We would welcome your views in the estimated costs and benefits that might arise as a result of the draft Regulations.

Question 4) Do you have any views on the estimated costs and benefits to business?

Question 5) Do you have any views on the estimated costs and benefits to enforcement authorities?

Question 6) Are there any other costs or savings that you expect to receive as a result of the proposed changes?

The Government is now seeking views on the draft Regulations as regards the costs and benefits set out above.

12. Consultation questions

We are seeking views from consultees on the questions set out throughout this consultation document. For ease of reference these are provided below:

Question 1) Do you have any general comments on the draft Statutory Instruments at Annex A and B?

Question 2) Is the procedure for dealing with seized property clear?

Question 3) What benefits might be derived from guidance and what aspects of the draft Regulations would you like addressed in guidance?

Question 4) Do you have any views on the estimated costs and benefits to business?

Question 5) Do you have any views on the estimated costs and benefits to enforcement authorities?

Question 6) Are there any other costs or savings that you expect to receive as a result of the proposed changes?

Please send any comments to the contact points listed on page 2 of this document by 3 February 2015.